MONTANA LEGISLATIVE HISTORY

Chapter 22 ~~19~~ 2001

Bill H 194 S _____ Original bill & history ✓ C

H. Committee on Business & Labor			S. Committee on Business & Labor		
Hearing Date(s)	1/15	✓ C	Hearing Date(s)	2/2	✓ C
		C			C
		C			C
		C			C
Date Out		C			

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

H BILL NO. 194

INTRODUCED BY Sylvia Boutboul-Reinecke
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LANGUAGE RELATING TO OVERTIME AND MINIMUM WAGE EXEMPTIONS FOR OUTSIDE SALES TO CONFORM WITH THE FEDERAL FAIR LABOR STANDARDS ACT; AMENDING SECTION 39-3-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 39-3-406, MCA, is amended to read:

"39-3-406. Exclusions. (1) The provisions of 39-3-404 and 39-3-405 do not apply with respect to:

(a) students participating in a distributive education program established under the auspices of an accredited educational agency;

(b) persons employed in private homes whose duties consist of menial chores, such as babysitting, mowing lawns, and cleaning sidewalks;

(c) persons employed directly by the head of a household to care for children dependent upon the head of the household;

(d) immediate members of the family of an employer or persons dependent upon an employer for half or more of their support in the customary sense of being a dependent;

(e) persons who are not regular employees of a nonprofit organization and who voluntarily offer their services to a nonprofit organization on a fully or partially reimbursed basis;

(f) persons with disabilities engaged in work that is incidental to training or evaluation programs or whose earning capacity is so severely impaired that they are unable to engage in competitive employment;

(g) apprentices or learners, who may be exempted by the commissioner for a period not to exceed 30 days of their employment;

(h) learners under the age of 18 who are employed as farm workers, provided that the exclusion may not exceed 180 days from their initial date of employment and further provided that during this

exclusion period, wages paid the learners may not be less than 50% of the minimum wage rate established in this part;

(i) retired or semiretired persons performing part-time incidental work as a condition of their residence on a farm or ranch;

(j) an individual employed in a bona fide executive, administrative, ~~or~~ professional, or outside sales capacity as these terms are defined by regulations of the commissioner;

(k) an individual employed by the United States of America;

(l) resident managers employed in lodging establishments or personal care facilities who, under the terms of their employment, live in the establishment or facility;

~~(m) an outside salesperson or marketing representative paid on a commission, contract, or salary basis who is primarily employed in selling or marketing products or services in the food distribution industry for a food broker, wholesaler, or association;~~

~~(n)~~(m) a direct seller as defined in 26 U.S.C. 3508;

~~(o)~~(n) a person placed as a participant in a public assistance program authorized by Title 53 into a work setting for the purpose of developing employment skills. The placement may be with either a public or private employer. The exclusion does not apply to an employment relationship formed in the work setting outside the scope of the employment skills activities authorized by Title 53.

~~(p)~~(o) a person serving as a foster parent, licensed as a foster care provider in accordance with 41-3-1141, and providing care without wage compensation to no more than six foster children in the provider's own residence. The person may receive reimbursement for providing room and board, obtaining training, respite care, leisure and recreational activities, and providing for other needs and activities arising in the provision of in-home foster care.

~~(q)~~(p) an employee employed in domestic service employment to provide live-in companionship services, as defined in 29 CFR 552.6, for individuals who, because of age or infirmity, are unable to care for themselves as provided under section 213(a)(15) of the Fair Labor Standards Act ~~(~~, 29 U.S.C. 213~~)~~.

(2) The provisions of 39-3-405 do not apply to:

(a) an employee with respect to whom the United States secretary of transportation has power to establish qualifications and maximum hours of service pursuant to the provisions of 49 U.S.C. 31502;

(b) an employee of an employer subject to 49 U.S.C. 10501 and 49 U.S.C. 60501, the provisions of part I of the Interstate Commerce Act;

(c) an individual employed as an outside buyer of poultry, eggs, cream, or milk, in their raw or natural state;

~~(d) an outside salesperson paid on a commission or contract basis who is primarily employed in selling advertising for a newspaper;~~

~~(e)~~(d) a salesperson, parts person, or mechanic paid on a commission or contract basis and primarily engaged in selling or servicing automobiles, trucks, mobile homes, recreational vehicles, or farm implements~~, or replacement parts~~ if the salesperson, parts person, or mechanic is employed by a nonmanufacturing establishment primarily engaged in the business of selling the vehicles~~,~~ or implements~~, or replacement parts~~ to ~~wholesalers or~~ ultimate purchasers;

~~(f)~~(e) a salesperson primarily engaged in selling trailers, boats, or aircraft if the salesperson is employed by a nonmanufacturing establishment primarily engaged in the business of selling trailers, boats, or aircraft to ultimate purchasers;

~~(g) an outside salesperson paid on a commission or contract basis who is primarily employed in selling office supplies, computers, or other office equipment for an office equipment dealer;~~

~~(h)~~(f) a salesperson paid on a commission or contract basis who is primarily engaged in selling advertising for a radio or television station employer;

~~(i)~~(g) an employee employed as a driver or driver's helper making local deliveries who is compensated for the employment on the basis of trip rates or other delivery payment plan if the commissioner finds that the plan has the general purpose and effect of reducing hours worked by the employees to or below the maximum workweek applicable to them under 39-3-405;

~~(j)~~(h) an employee employed in agriculture or in connection with the operation or maintenance of ditches, canals, reservoirs, or waterways that are not owned or operated for profit, that are not operated on a sharecrop basis, and that are used exclusively for supply and storing of water for agricultural purposes;

~~(k)~~(i) an employee employed in agriculture by a farmer, notwithstanding other employment of the employee in connection with livestock auction operations in which the farmer is engaged as an adjunct to the raising of livestock, either alone or in conjunction with other farmers, if the employee is:

(i) primarily employed during a workweek in agriculture by a farmer; and

(ii) paid for employment in connection with the livestock auction operations at a wage rate not less than that prescribed by 39-3-404;

~~(l)~~(j) an employee of an establishment commonly recognized as a country elevator, including an establishment that sells products and services used in the operation of a farm if no more than five employees are employed by the establishment;

~~(m)~~(k) a driver employed by an employer engaged in the business of operating taxicabs;

~~(n)~~(l) an employee who is employed with the employee's spouse by a nonprofit educational institution to serve as the parents of children who are orphans or one of whose natural parents is deceased or who are enrolled in the institution and reside in residential facilities of the institution so long as the children are in residence at the institution and so long as the employee and the employee's spouse reside in the facilities and receive, without cost, board and lodging from the institution and are together compensated, on a cash basis, at an annual rate of not less than $10,000;

~~(o)~~(m) an employee employed in planting or tending trees; cruising, surveying, or felling timber; or transporting logs or other forestry products to a mill, processing plant, railroad, or other transportation terminal if the number of employees employed by the employer in the forestry or lumbering operations does not exceed eight;

~~(p)~~(n) an employee of a sheriff's department who is working under an established work period in lieu of a workweek pursuant to 7-4-2509(1);

~~(q)~~(o) an employee of a municipal or county government who is working under a work period not exceeding 40 hours in a 7-day period established through a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 40 hours in a 7-day, 40-hour work period must be compensated at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

~~(r)~~(p) an employee of a hospital or other establishment primarily engaged in the care of the sick, disabled, aged, or mentally ill or defective who is working under a work period not exceeding 80 hours in a 14-day period established through either a collective bargaining agreement when a collective bargaining unit represents the employee or by mutual agreement of the employer and employee when a bargaining unit is not recognized. Employment in excess of 8 hours a day or 80 hours in a 14-day period must be compensated for at a rate of not less than 1 1/2 times the hourly wage rate for the employee.

~~(s)~~(q) a firefighter who is working under a work period established in a collective bargaining agreement entered into between a public employer and a firefighters' organization or its exclusive representative;

~~(t)~~(r) an officer or other employee of a police department in a city of the first or second class who is working under a work period established by the chief of police under 7-32-4118;

~~(u)~~(s) an employee of a department of public safety working under a work period established pursuant to 7-32-115;

~~(v)~~(t) an employee of a retail establishment if the employee's regular rate of pay exceeds 1 1/2 times the minimum hourly rate applicable under section 206 of the Fair Labor Standards Act of 1938 ~~,~~ 29 U.S.C. 206~~,~~, and if more than half of the employee's compensation for a period of not less than 1 month is derived from commissions on goods and services;

~~(w)~~(u) a person employed as a guide, cook, camp tender, or livestock handler by a licensed outfitter as defined in 37-47-101;

~~(x)~~(v) an employee employed as a radio announcer, news editor, or chief engineer by an employer in a second- or third-class city or a town;

~~(y)~~(w) an employee of the consolidated legislative branch as provided in 5-2-503."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

FISCAL NOTE

Bill #: HB0194 **Title:** Revise overtime and minimum wage exemptions for outside sales

Primary Sponsor: Sylvia Bookout-Reinicke **Status:** As Introduced

Sponsor signature Date Chuck Swysgood, Budget Director 1/10/01 Date

Fiscal Summary

	FY2002 Difference	FY2003 Difference
Expenditures:	0	0
Revenue:	0	0
Net Impact on General Fund Balance:	**$0**	**$0**

Yes	No		Yes	No	
	X	Significant Local Gov. Impact		X	Technical Concerns
	X	Included in the Executive Budget		X	Significant Long-Term Impacts
	X	Dedicated Revenue Form Attached		X	Family Impact Form Attached

Fiscal Analysis

ASSUMPTIONS:

1. There will be no fiscal impact to the state.

HB 194

1/05	Fiscal Note Requested		
1/05	Referred to Judiciary		
1/12	Hearing		
1/17	Fiscal Note Received		
1/17	Fiscal Note Printed		
1/19	Committee Executive Action--Bill Passed as Amended	14	3
1/19	Committee Report--Bill Passed as Amended		
1/22	2nd Reading Passed	89	10
1/23	3rd Reading Passed	86	13
	Transmitted to Senate		
1/24	Referred to Judiciary		
1/24	Revised Fiscal Note Requested		
1/31	Revised Fiscal Note Received		
2/02	Fiscal Note Printed		
2/05	Hearing		
2/07	Committee Executive Action--Bill Concurred	7	2
2/07	Committee Report--Bill Concurred		
3/01	2nd Reading Concurred on Voice Vote	48	0
3/02	3rd Reading Concurred	49	0
	Returned to House		
3/03	Sent to Enrolling		
3/05	Returned from Enrolling		
3/06	Signed by Speaker		
3/07	Signed by President		
3/07	Transmitted to Governor		
3/16	Signed by Governor		
3/16	Chapter Number Assigned		
	Chapter Number 64		
	Effective Date: 3/16/2001 - All Sections		

HB 192 Introduced by Mood *LC0653 Drafter: Martin*

Allow Payment of Individual Income Taxes by Credit Card

1/05	Introduced		
1/05	Referred to Taxation		
1/12	Hearing		
1/16	Fiscal Note Requested		
1/17	Fiscal Note Received		
1/19	Committee Executive Action--Bill Passed as Amended	15	5
1/19	Committee Report--Bill Passed as Amended		
1/22	2nd Reading Passed	76	24
1/23	3rd Reading Passed	73	27
	Transmitted to Senate		
1/24	Referred to Taxation		
1/24	Revised Fiscal Note Requested		
1/25	Revised Fiscal Note Received		
1/29	Fiscal Note Printed		
2/06	Hearing		
2/09	Committee Executive Action--Bill Concurred	9	0
2/09	Committee Report--Bill Concurred		
3/01	2nd Reading Concurred	41	7
3/02	3rd Reading Concurred	40	9
	Returned to House		
3/03	Sent to Enrolling		
3/05	Returned from Enrolling		
3/06	Signed by Speaker		
3/07	Signed by President		

3/07	Transmitted to Governor		
3/16	Signed by Governor		
3/16	Chapter Number Assigned		
	Chapter Number 50		
	Effective Date: 10/01/2001 - All Sections		

HB 193 Introduced by Smith *LC0468 Drafter: McClure*

Increase Student Transportation Rates

11/13	Fiscal Note Needed		
1/06	Introduced		
1/06	Referred to Education		
1/06	Fiscal Note Requested		
1/11	Fiscal Note Received		
1/12	Hearing		
1/15	Fiscal Note Printed		
1/22	Tabled in Committee		
2/23	Missed Deadline for General Bill Transmittal		

HB 194 Introduced by Bookout-Reinicke *LC1255 Drafter: McClure*

Revise Overtime and Minimum Wage Exemptions for Outside Sales

1/06	Introduced		
1/06	Referred to Business and Labor		
1/06	Fiscal Note Requested		
1/10	Fiscal Note Received		
1/10	Fiscal Note Printed		
1/15	Hearing		
1/15	Committee Executive Action--Bill Passed as Amended	13	6
1/16	Committee Report--Bill Passed as Amended		
1/17	2nd Reading Passed	92	8
1/18	3rd Reading Passed	88	10
	Transmitted to Senate		
1/19	Referred to Business and Labor		
2/02	Hearing		
2/02	Committee Executive Action--Bill Concurred	8	0
2/02	Committee Report--Bill Concurred		
2/03	2nd Reading Concurred on Voice Vote	42	0
2/05	3rd Reading Concurred	48	0
	Returned to House		
2/06	Sent to Enrolling		
2/06	Returned from Enrolling		
2/06	Signed by Speaker		
2/09	Signed by President		
2/10	Transmitted to Governor		
2/19	Signed by Governor		
2/19	Chapter Number Assigned		
	Chapter Number 22		
	Effective Date: 2/19/2001 - All Sections		

HB 195 Introduced by Wolery, et al. *LC0775 Drafter: Lane*

Revise Transferable Crime under Youth Court Act -- Dangerous Drug

1/06	Introduced		
1/06	Referred to Judiciary		
1/18	Hearing		
1/18	Committee Executive Action--Bill Passed as Amended	15	4

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN JOE MCKENNEY**, on January 15, 2001 at 9:00 A.M., in Room 172 Capitol.

ROLL CALL

Members Present:

Rep. Joe McKenney, Chairman (R)
Rep. Gary Matthews, Vice Chairman (D)
Rep. Sylvia Bookout-Reinicke (R)
Rep. Roy Brown (R)
Rep. Nancy Fritz (D)
Rep. Dave Gallik (D)
Rep. Dennis Himmelberger (R)
Rep. Carol C. Juneau (D)
Rep. Jim Keane (D)
Rep. Rick Laible (R)
Rep. Bob Lawson (R)
Rep. John Musgrove (D)
Rep. William Price (R)
Rep. Allen Rome (R)
Rep. Donald Steinbeisser (R)
Rep. James Whitaker (R)

Members Excused: Rep. Rod Bitney, Vice Chairman (R)
Rep. Kathleen Galvin-Halcro (D)
Rep. Brett Tramelli (D)

Members Absent: None.

Staff Present: Gordon Higgins, Legislative Branch
Jane Nofsinger, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB145, HB158, HB194, HB218, 1/15/2001
Executive Action: HB73, HB177, HB194

Closing by Sponsor:

REP. FACEY said in a good business environment the business owner should know what the requirements are and what they are expected to do. This bill would give these guidelines to potable water haulers in Montana.

HEARING ON HEARING ON HB194

Sponsor: **REP. SYLVIA BOOKOUT-REINICKE, HD71, Alberton**

Proponents: **Charles Brooks, Billings Area Chamber of Commerce**
Aidan Myhre, Montana Chamber of Commerce
Charles Switzer, Kalispell and Bozeman Chambers of Commerce

Opponents: **Patti Keebler, Montana AFL-CIO**

Opening Statement by Sponsor:

REP. BOOKOUT-REINICKE said this bill had come to her attention through a prior representative, Matt Brainard, who was now on the Public Service Commission. Two workers who were outside salesmen had sued a Montana company for overtime wages and won. This bill would match state law with federal by adding the term "outside sales" to minimum and overtime wage exemptions.

Proponents' Testimony:

Mr. Brooks said the bill made logical sense to bring the Montana code in compliance with the federal code.

Ms. Myhre said she supported any measure which brought clarity and supported business.

Mr. Switzer said he supported anything which made it easier to do business.

Opponents' Testimony:

Ms. Keebler said although she understand the change was to align the state with the federal code, she had to remain in opposition to exempting outside salesmen from state law.

Questions from Committee Members and Responses:

REP. LAIBLE asked **Mr. Andrew** the definition of an outside salesman. **Mr. Andrew** replied it was outlined in the federal code.

Closing by Sponsor:

REP. BOOKOUT-REINICKE called this an economic development bill and presented a recent article from a newspaper. EXHIBIT(10) She quoted from the article which said Montana had an "employer-unfriendly litigious atmosphere," and that corporate attorneys recommend against having employees in Montana. She urged the committee to vote for the bill.

EXECUTIVE ACTION ON HB73

{Tape : 2; Side : B; Approx. Time Counter : 7}

Motion/Vote: **REP. BROWN** moved **HB73. Motion carried 18-1 with Gallik voting no.**

EXECUTIVE ACTION ON HB177

{Tape : 2; Side : B; Approx. Time Counter : 9}

Motion/Vote: **REP. KEANE** moved that **HB177 DO PASS. Motion carried 17-2 with Brown and Himmelberger voting no.**

EXECUTIVE ACTION ON HB194

{Tape : 2; Side : B; Approx. Time Counter : 15}

Motion/Vote: **REP. BOOKOUT-REINICKE** moved that **HB194 DO PASS AS AMENDED. Motion carried 13-6 with Galvin-Halcro, Juneau, Keane, Fritz, Musgrove, and Tramelli voting no.**

ADJOURNMENT

Adjournment: 11:33 A.M.

REP. JOE MCKENNEY, Chairman

JANE NOFSINGER, Secretary

JM/JN

MINUTES

MONTANA SENATE
57th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS AND LABOR

Call to Order: By **CHAIRMAN MIKE TAYLOR**, on February 2, 2001 at 8:00 A.M., in Room 422 Capitol.

ROLL CALL

Members Present:

Sen. Mike Taylor, Chairman (R)
Sen. Mike Sprague, Vice Chairman (R)
Sen. Edward Butcher (R)
Sen. Vicki Cocchiarella (D)
Sen. Sam Kitzenberg (R)
Sen. Dale Mahlum (R)
Sen. Glenn Roush (D)
Sen. Don Ryan (D)

Members Excused: Sen. Dale Berry (R)

Members Absent: None.

Staff Present: Bart Campbell, Legislative Branch
Kyanne Kelly, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 299, 1/30/2001; SB 274, 1/30/2001; HB 194, 1/30/2001
Executive Action: HB 194

SENATOR BOB KEENAN, SD 38, BIGFORK, said he just wants to get a little competition into the marketplace.

HEARING ON HB 194

Sponsor: **REPRESENTATIVE SILVA BOOKOUT-REINICKE, HD 71, ALBERTON**

Proponents: **Kristi Blazer, MT Beer & Wine Wholesalers Assoc**
Riley Johnson, Federation of Independent Business

Opponents: None

Opening Statement by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 2.2}

REPRESENTATIVE SILVA BOOKOUT-REINICKE, HD 71, ALBERTON, stated this bill basically matches Montana up to federal law. She stated that it says that outside sales people are not eligible for over-time pay. EXHIBIT(4)

Proponents' Testimony:

Kristi Blazer, MT Beer & Wine Wholesalers Association, said her organization supports this bill because it brings Montana law into conformity with federal law.

Riley Johnson, Federation of Independent Business, said they support this legislation as it gives uniformity throughout the country.

Opponents' Testimony: None

Questions from Committee Members and Responses:

Senator Ed Butcher asked if this would mean outside sales people could not come back later to claim over time.

EPRESENTATIVE BOOKOUT-REINICKE said yes.

Closing by Sponsor:

{Tape : 3; Side : A; Approx. Time Counter : 10.4}

REPRESENTATIVE SILVA BOOKOUT-REINICKE, HD 71, ALBERTON, closed without comment.

EXECUTIVE ACTION ON HB 194

Motion/Vote: **SEN. MAHLUM** moved that **HB 194 BE CONCURRED IN. Motion carried unanimously.**

ADJOURNMENT

Adjournment: 10:05 A.M.

SEN. MIKE TAYLOR, Chairman

KYANNE KELLY, Secretary

MT/KK